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## RESULTS OF THE PRACTICAL ABOLITION OF CAPITAL PUNISHMENT IN BELGIUM.

BY MAYNARD SHIPLEY.

The French penal code of 1810, which was in force in Belgium until 1867, prescribed the death penalty for almost all forms of grave criminality. As early as 1827, however, a movement for the abolition of capital punishment in Belgium was started through the publication of the monograph "*De la Mission de la Justice Humaine et de l'Injustice de la Peine de Mort*," by M. Ed. Ducpétiaux (Bruxelles: Y. Y. Cantaerts, 1827). The immediate result of this movement was that no capital sentences were carried out for crimes against property after 1830. A law of the 8th of January of that year suppressed capital punishment for duelling, and the death penalty for counterfeiting was legally abolished as early as 1832.

From early in the reign of Leopold I. until the year 1835 capital sentences were systematically commuted to life imprisonment with hard labor.\* This, no doubt, was due to the influence which in matters of severe punishments the first queen of the Belgians, Marie Louise, wife of Leopold I., exercised over her husband and her son, the present king.† Her attention had been drawn to the cases of several persons who had been beheaded for crimes of which they were subsequently proved innocent.‡ It was at the same time brought to the notice of both the king and his legal advisers

\* The pardoning power (including commutation, remittance, etc.) is vested in the king by virtue of Article 73 of the Belgian Constitution, Feb. 7, 1831.

† Cf. "*Pandects Belges—Exécution Capitale*," No. 5.

‡ See "*Allgemeine deutsche Strafrechtszeitung*," 1862, 63.

that such miscarriages of justice were by no means rare, either in Belgium or elsewhere.\*

Moreover, it was found that capital executions were not necessary to the preservation of life and property in Belgium. Judicial statistics for the period of clemency preceding 1835 showed that grave crimes had actually decreased. But in 1834 the number of capital crimes and condemnations abruptly rose, and the advocates of the death penalty immediately ascribed this augmentation of grave criminality to the inactivity of the scaffold. In 1835, during the sitting of January 31, the government was severely criticised in the Senate for its clemency, several members protesting against the "false philanthropy" of M. Barra, the minister of justice. The clamor for blood at last became so urgent that the ministry was forced to give way, and a noted criminal was executed at Courtrai, in a province which for nineteen years had not witnessed a capital execution.† During the four years following, two more executions occurred. While this concession on the part of the ministry to the popular cry for blood was extremely gratifying to one party, it was severely criticised in the Chamber and by the press.

It was hoped, however, that the example of judicial severity would act as a deterrent influence. The protagonists of the death penalty prophesied an immediate diminution in capital crimes. Unfortunately, their expectations were not realized. The official statistics show an actual increase

\*For instances of judicial error in capital cases see "La Belgique Judiciaire," 1855, p. 360; V. Götting, "Der Neuen Pitaval," xxvii, pp. 43 and 182; "Phillip's Vacation Thoughts on Capital Punishment," pp. 99-141; Seger, "Ueber die Todesstrafe," p. 18; "Report on Abolition," New York, 1857, p. 14; "Eco dei Tribunali," 1860, No. 1038; *Dublin Review*, 1861, pp. 477-485; *Le Droit*, Feb. 26, 1860, Nos. 50 and 59; *Times* (London), Jan. 9 and 10, 1857; Ortolan, "Éléments du Droit Criminel," 607, in note; Professor Gabba, "El pro y el contra en la Cuestion de la Pena de Muerte," Pisa, 1866, pp. 71-73.

In Maine and Rhode Island the death penalty was only abolished after several innocent persons had suffered the irreparable penalty, and it appears that during the present year (1905) an innocent man was hanged in Pennsylvania.

†See remarks by Vischers, in the *Zeitschrift für Ausländische Gesetzgebung*, viii, pp. 118, 119; also an essay by Professor Karl Mittermaier in "Archiv des Crim.," 1836, p. 11.

of capital condemnations during the five years following, the total number being twenty-nine during the five years 1831-35, and thirty-one during the years 1836-40.\* Of those condemned but two suffered the extreme penalty. Of the two hundred and sixty-five persons condemned during the twenty-five years 1841-65, fifty were executed,—an average of two annually,—while the annual average of capital condemnations was nearly eleven (10.6).

The last execution in Belgium took place in Northern Flanders, in the judicial district of Ghent, July 1, 1863. From that day all the successive ministers of justice have imitated M. Bara, and have commuted every death sentence to life imprisonment with hard labor.†

Notwithstanding the foregoing evidences against the efficacy of the scaffold as a deterrent of grave crimes, no less an authority than Baron Garofolo points to the brief restoration of the gallows in Belgium, and the immediate decrease in capital crimes in *one* of the provinces, as proof of the necessity and efficacy of capital punishment as a deterrent. If certain small periods of time and certain special provinces be taken as criteria, it is quite possible to prove, with M. Bravay, that the practical abolition of capital punishment in Belgium resulted in “an epidemic of incendiarism and assassination,” and that this epidemic “was brought to a brisk stop after the execution of a few culprits.”‡ On the other hand, figures are not wanting which show just as conclusively that during the domination of France, previous to 1814, executions were deplorably frequent, while grave

\*Cf. De Sellon, “*Quelques Observations sur l'Ouvrage Intitulé 'De la Nécessité du Maintien de la Peine de Mort'*” (1831).

† Males convicted of capital crimes are confined for life at the cellular prison in Louvain, and women guilty of murder or treason (the only crimes now capitally punishable), are imprisoned in another cellular prison at Namur.

‡ Cf. “*La Peine de Mort au Point de Vue Pratique et Théorique. Discours prononcé à la séance solennelle de rentrée de la Cour d'Appel de Bruxelles, le 15<sup>me</sup> Octobre, 1862, par M. de Bravay, procureur-général.*” Un second discours fut prononcé en 1863, sur le meme sujet.

crimes continued to increase. In the year 1801 there were ninety capital sentences passed, in 1802 there were eighty-five, and in 1803 eighty-six. Yet, as stated above, it was during these years that the greatest number of executions took place.\* From 1808 the number of executions fell considerably, and this diminution, so far from resulting in an "epidemic of incendiarism and assassination," was followed by a great decrease in grave crimes. After the still greater reduction in the number of capital executions under the domination of Holland, the number of grave crimes fell even lower, but six capital sentences being passed in 1823.

If we take, instead of time periods, certain localities or provinces as a basis of argument, we find that in two provinces, Limburg and Luxemburg, only one execution took place from 1830-62, and that in Liège not a single execution has taken place since 1825. Yet we find that (according to statistics obtained by Professor Mittermaier) the number of capital crimes decreased in Liège by 13 per cent.; in the years 1832-35 there was one person accused in 66,475; in the years 1850 to 1855 only one in 102,972. On the other hand, the same high authority states† that in the district of the Court of Appeals of Brussels the number of executions from 1832-62 was twenty-five, and the number of accused persons increased within twenty years by 22 per cent.; in the district of Ghent the number of executions was twenty-two, and the increase of crimes amounted to 13 per cent.‡ Furthermore, it was shown by M. Ducpétiaux that the yearly average of murders in nineteen years, ending with 1814, with twenty-eight executions a year, was twenty-one, whereas in the next fifteen years, with less than five executions, there were only four mur-

\* See "Statistique Générale de la Belgique: Exposé de la Situation du Royaume," 1852, p. 359.

† Professor Karl Y. A. Mittermaier, "Die Todesstrafe."

‡ Essay against the Death Penalty in Belgium in the *Suppléments au Journal La Meuse*, 15 Février, 1862.

ders. It is only natural that Inspector Ducpitiaux, as well as the people at large, should have become convinced that "the punishment by death is useless and unfit as a means of preventing crime; that it is the object of general and continually growing repugnance, and can be replaced by safeguards more efficacious."\*

On May 3, 1893, M. Le Jeune, the Belgian minister of justice, delivered an address to the Chamber of Representatives, in the course of which he said: "We have since 1867, in our penal code, but four crimes punishable by death: assassination, parricide, poisoning, murder, accompanied by theft. Let us see if these crimes have been more frequent since 1863 than at the time when we guillotined those who were guilty of them. I have the honor to show to the Chamber for each of the five years, beginning with 1830, the number of condemnations pronounced for the chief of these four crimes:—

1831-35 . . . . .	29	1861-65 . . . . .	36
1836-40 . . . . .	31	1866-70 . . . . .	39
1841-45 . . . . .	48	1871-75 . . . . .	38
1846-50 . . . . .	80	1876-80 . . . . .	40
1851-55 . . . . .	63	1881-85 . . . . .	48
1856-60 . . . . .	38	1886-90 . . . . .	36

"What the succession of numbers establishes is the relative fixedness of grave criminality, with a marked tendency to diminution, and one must notice in connection with them the growth of the population of the kingdom.

"Four of the above totals have furnished to the partisans of the death penalty an argument of which use was made in the discussion of 1867, and which was singularly mistaken. These four totals refer to the four periods of 1841-45, 1846-50, 1851-55, 1856-60, when capital condemnations stood respectively at 48, 80, 63, 38.

\* Ed. Ducpétiaux, "Statistique de la Peine de Mort en Belgique, en France, en Angleterre," 1851.

"Grave crimes, they said, rose successively to the numbers forty-eight and eighty during the periods 1841-45 and 1846-50. It was fortunately brought down to the number sixty-three at first, and then to the number thirty-six, by the aid of executions, since the number of executions was three for the period 1831-45, two for 1836-40, seven for 1841-45, eighteen for 1846-50, again eighteen for 1850-55. Strange error. The four numbers 48, 80, 63, 38, correspond to an enormous increase of general crimes from 1847-57, which coincides with the rise of prices in bread and coal, disease of potatoes, and other social circumstances which influence public morality."

Continuing, his Excellency further remarked: "The relative fixity of grave criminality does not exclude the passing variations which are associated with the accidental fluctuations of general criminality.

"It is certain that the number of grave crimes has remained stationary since 1830, and that the cessation of capital executions since 1863 has in no wise determined its renewal."\*

The table following, tendered the author by the courtesy of G. W. Roosevelt, United States consul at Brussels, and M. Louis Franck, of Brussels, indicates that the annual variations in the number of capital crimes show no tendency to vary according to the relative increase or decrease in the severity with which the law is administered:—

\* *Discours de M. Le Jeune, ministre de la justice*, Ann. Parl., 3 Mai, 1893, p. 1350.

The author's thanks are due M. A. Meyer, procureur-général of the judicial district of Liège, for his kindness in sending him a copy of M. Le Jeune's speech, as also for other valuable data relative to the death penalty in Belgium.

CAPITAL CONDEMNATIONS AND EXECUTIONS FOR CRIMES PUNISHABLE BY DEATH  
UNDER THE CODES OF 1810 AND 1867.

Years.	Number of Condemnations according to Motives.				Total.	Number of Executions.	Annual Average of Condemnations.	Proportion of Executions of 100 Condemnations.
	Assassination.	Poisoning.	Parricide.	Murder and Theft.				
1831-35 ..	23	3	-	3	29	3	5.8	10.3
1836-40 ..	25	5	1	-	31	2	6.2	6.4
1841-45 ..	41	4	1	2	48	7	9.6	14.5
1846-50 ..	68	6	3	3	80	18	16	22.5
1850-55 ..	50	7	2	4	63	18	12.6	28.5
1856-60 ..	33	1	3	1	38	4	7.6	10.5
1861-65 ..	30	3	1	2	36	3	7.2	8.3
1866-70 ..	37	1	-	1	39	-	7.8	-
1871-75 ..	34	2	2	-	38	-	7.6	-
1876-80 ..	33	4	2	1	40	-	8	-
1881-85 ..	38	1	2	6	47	-	9.4	-
1886-90 ..	29	3	2	1	35	-	7	-
1891-95 ..	42	4	3	8	57	-	11.4	-
1896 . . .	9	-	-	2	11	-	11	-
1897 . . .	3	-	-	-	3	-	3	-
1898 . . .	3	1	-	2	6	-	6	-
1899 . . .	2	-	-	2	9	-	4	-
1900 . . .	1	1	-	-	2	-	2	-

The foregoing table shows that, whereas the annual average of capital condemnations during the thirty-five years 1831-65 was 9.28, the last execution occurring in 1863, the annual average of condemnations during the thirty-five years 1866-1900 was 8.05, and that during the five years ending with 1900 the annual average of capital condemnation falls to 5.2, the lowest in the history of the kingdom, while in 1900 there were but two persons condemned for capital offences in a population of nearly seven millions. And this despite the facts that capital punishment is practically abolished, and that Belgium is, next to China, the most densely populated country in the world, with a larger consumption of alcohol per capita than that of any other nation, with the possible exception of the Danish.



Notwithstanding the prejudices against the death penalty in Belgium, all efforts to legally abolish it have so far proved fruitless, proposals having been made to the Chamber or to the Senate in 1851, 1866, and 1867.

In January, 1857, the government issued a memorial in which the abolition of capital punishment was approved for all political crimes, it being pointed out that the crime of one administration might be the meritorious deed of the succeeding government.\*

In June, 1863 (and not 1865 as mentioned by Professor Tarde), there was founded in Liège an "Association pour l'Abolition de la Peine de Mort," under the presidency of M. Forguet, a lawyer and statesman of great ability. It comprised three hundred persons distinguished at the bar and in politics. Its action obtained immediate results. From 1863, the date of its foundation, the guillotine ceased functioning. Its purpose being accomplished, the society disbanded after having published various pamphlets, but its work outlives it. "The restoration of the scaffold in Belgium is an impossibility," writes M. Louis Franck. "The people no longer desire to see men die. All they desire is to be happy in the advanced stage of their morals."†

\* Writers who consider capital punishment unjust for political crimes are: Zachariae, "*Archiv des Criminalrechts*," 1845, p. 276; Berner, "*Abschaffung der Todesstrafe*," p. 33; Hélie, "*Théorie du Code Pénal*," Nos. 964-984; Bérenger, "*De la Répression Pénale*," pp. 9-11; Guizot, "*De la Peine de Mort en Matière Politique*."

† In a communication to the author. The author's thanks are due M. Franck, the distinguished Belgium jurist, for the table of capital crimes and condemnations reproduced above.